



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 19, 1994

Mr. Jerry Bruce Cain
Assistant City Attorney
City of Laredo
P.O. Box 579
Laredo, Texas 78042-0579

OR94-006

Dear Mr. Cain:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552 (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 21633.

The City of Laredo (the "city") has received an open records request for information regarding the suspension of a city police officer. Specifically, the requestor seeks "a copy of the letter of suspension for police officer I.P. Rivera" and "any documents outlining previous and current disciplinary action against Mr. Rivera during his tenure as a Laredo police officer."² You seek a ruling regarding the application of sections 552.101, 552.102, 552.103(a), and 552.108 (former sections 3(a)(1), 3(a)(2), 3(a)(3), and 3(a)(8)) of the act to the information held by the city that is responsive to this request.

You have submitted for our review only one document, which is titled "Order of Indefinite Suspension." You basically contend that this document is subject to public disclosure, but ask whether it might be excepted from disclosure by section 552.101 or

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

²We understand that this request replaces an earlier request, in which the requestor sought "a copy of the letter of suspension regarding police officer I.P. Rivera and any other city documents regarding his suspension and work history with the city."

section 552.102 in conjunction with section 143.089 of the Local Government Code. Section 143.089 of the Local Government Code applies to police personnel files maintained by cities that have adopted the fire fighters' and police officers' civil service law. Section 143.089(a) requires the city's civil service director to maintain a personnel file that contains certain information for each police officer. Section 143.089(f) provides that the civil service director "may not release any information contained in a . . . police officer's personnel file without first obtaining the person's written permission, *unless the release of the information is required by law.*" Local Gov't Code § 143.089(f) (emphasis added). As you correctly point out, information in a police officer's civil service personnel file may be released without the officer's written permission if the Open Records Act requires disclosure of the information. See Open Records Decision No. 562 (1990) at 6.

You indicate that the "Order of Indefinite Suspension" issued to Officer Rivera by the city's chief of police was filed with the city's Civil Service Commission pursuant to section 143.052(c) of the Local Government Code, which provides that when the head of the police department suspends a police officer, a statement must be filed with the civil service commission explaining the reasons for the suspension. We note that section 143.089(a)(2) provides that a police officer's civil service personnel file

must contain any letter, memorandum, or document relating to . . . any misconduct by the . . . police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department

We assume that the suspension order has been placed in Officer Rivera's civil service personnel file in accordance with this provision and is subject to release under section 143.089(f) without Officer Rivera's permission if this release is required under the Open Records Act.

Section 552.101 of the Open Records Act excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.102 excepts "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Both of these exceptions apply to information protected by the common-law right to privacy. See *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Common-law privacy protects information if it contains highly intimate or embarrassing facts about an individual's private affairs, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found.*, 540 S.W.2d at 683-85. Actions

associated with a person's public employment generally do not constitute that person's private affairs. *See* Open Records Decision No. 470 (1987) at 4.

We have reviewed the information contained in the Order of Indefinite Suspension. None of this information is intimate or embarrassing. Moreover, the public has a legitimate interest in the reasons for a public employee's suspension. *See* Open Records Decision No. 444 (1986). We conclude that the Open Records Act requires disclosure of the Order of Indefinite Suspension; you may therefore release this information without Officer Rivera's permission.

Although you have not submitted any other documents for our review, you suggest that Officer Rivera's civil service personnel file may contain other work history information that would be responsive to the open records request. Release of this information is governed by the same principles discussed above. Because you have not submitted any such information for our review, however, we are unable to determine whether the act would mandate release of the information.

You also indicate that Officer Rivera has appealed his suspension and that he filed his notice of appeal with the city's Civil Service Commission pursuant to sections 143.010(a) and 143.057(b) of the Local Government Code, which require that a notice of appeal be filed with the commission within ten days and allow the officer to choose to have his appeal heard by a third party hearing examiner. The notice of appeal is apparently analogous to a court pleading. Section 143.089 does not require that Officer Rivera's civil service personnel file contain his notice of appeal. However, we are unaware of any provision in the act or otherwise that would allow or require you to withhold this information from public disclosure. We therefore conclude that this information must also be released to the requestor.

Finally, you state that the police department also holds information concerning Officer Rivera in a personnel file maintained by the department and in internal affairs investigative files. You contend that any information contained in these files is excepted from required public disclosure under sections 552.103(a) and 552.108 of the Open Records Act. Under section 143.089(g) of the Local Government Code, a police department may maintain a personnel file for a police officer that is separate from the personnel file maintained by the civil service commission. *See generally* Open Records Decision No. 562 at 6-8. Section 143.089(g) provides that

the [police] department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer. The department shall refer to the director [of civil service] or the director's designee a person or agency that requests information that is maintained in the . . . police officer's personnel file.

Recently, in *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.-- Austin 1993, writ denied), the court addressed a request for information contained in a police officer's personnel file maintained by a city police department for its use and addressed the applicability of section 143.089(g) thereto. The records included in the personnel file related to complaints against the police officer for which no disciplinary action was taken. The court determined that section 143.089(g) made these records confidential. *City of San Antonio*, 851 S.W.2d at 949. The *City of San Antonio* court, however, did not comment on the availability of information contained in the police officer's civil service file. In cases in which a police department takes disciplinary action against a police officer, it is required by section 143.089(a)(2) to transfer records relating to the investigation and disciplinary action to the city civil service commission. Such records may not be withheld under section 552.101 of the act. Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6.³

You have not submitted the internal affairs investigation files to us for review, and we are therefore unable to determine the applicability of sections 552.103(a) and 552.108 of the act to the information in these files. Moreover, because it is not apparent whether any of the internal affairs investigations resulted in disciplinary action, we are unable to determine the applicability of section 143.089(g) to the information in these files. We note, however, that if none of the investigations resulted in disciplinary action, information maintained by the police department that relates to such investigations must be withheld from required public disclosure under section 552.101 of the act in conjunction with section 143.089(g) of the Local Government Code. However, if any of the internal affairs investigations did result in disciplinary action, then those materials should be transferred to the civil service commission pursuant to section 143.089(a)(2) of the Local Government Code and must be released in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

³This office assumes that the city, in compliance with section 143.089(g), referred the requestor to the director of civil service for the records maintained by that branch of the city.

LRD/GCK/rho

Ref.: ID# 21633

Enclosures: Documents submitted

cc: Ms. Sharon Simonson
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(w/o enclosures)